

ANDREW AVILA, #02052352	§	
VS.	§	CIVIL ACTION NO. 4:16cv875
DIRECTOR, TDCJ-CID	§	

Petitioner Andrew Avila, a prisoner confined in the Texas prison system, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He is challenging his Denton County conviction for the offense of Aggravated Robbery. On July 29, 2015, after a plea of guilty, he was sentenced to twelve years of imprisonment. The case was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petition should be denied. Petitioner has filed objections.

1

In his objections, Petitioner argues that his convictions in both federal and state court violate the *Petite* Policy. *See Petite v. United States*, 361 U.S. 529 (1960). The *Petite* policy is an internal rule in the Justice Department that a “federal prosecution following state prosecution for the same act is allowed only where there are compelling reasons.” *United States v. Patterson*, 809 F.2d 244, 248 (5th Cir. 1987). The *Petite* policy, however, is an internal rule, and “criminal defendants may not invoke it to bar prosecution by the federal government.” *Id.* (citations omitted). Petitioner may not obtain relief based on the *Petite* policy. The Fifth Circuit reiterated that double jeopardy does not bar prosecutions in federal and state court for the same offense. *Id.* at 247.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner’s objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions not previously ruled on are **DENIED**.

SIGNED this 3rd day of July, 2019.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE